



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201331012

MAY 07 2013

Uniform Issue List: 408.03-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXX  
IRA B = XXXXXXXXXXXXXXXX  
Financial Institution C = XXXXXXXXXXXXXXXX  
Amount 1 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX:

This is in response to your request dated March 27, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, represents that she received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to her misunderstanding of a suggestion made by her tax preparer concerning taking distributions from IRA B.

Taxpayer A maintained IRA B with Financial Institution C. In April 2012, Taxpayer A went to her tax preparer's office to sign her 2011 tax return. While she was reviewing the return her preparer briefly mentioned to her that if she anticipated her 2012 personal income would be similar to her 2011 income, they should meet at a future date and discuss transferring money from her retirement account to offset itemized deductions that she had on her individual tax return. The preparer provided a brief example of how she might take an additional amount of funds from her IRA account that would then not be subject to income taxes. The preparer provided in a statement accompanying this

request that it was not her intention to leave Taxpayer A with the impression that she could close her entire retirement account and not pay any income taxes as a result.

In November 20<sup>th</sup>, without any further communication with her preparer, Taxpayer A completely liquidated IRA B and transferred the proceeds to a non-IRA account with Financial Institution C. Taxpayer A further represents that she was under stress during the 60-day period. She has submitted with the request for a ruling, letters from several health providers that document the stress Taxpayer A was under during this period as the result of the probate of her husband's estate since his death in 20<sup>th</sup>.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayers A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to timely roll over the distribution of Amount 1. The facts indicate that Taxpayer A completed an IRA Distribution Form with the intention of transferring Amount 1 from her IRA to a non-IRA account with Financial Institution C because failed the advice provided by her tax preparer to liquidate only a portion of IRA B. In addition, after the distribution Taxpayer A used the funds for personal expenses.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA B.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX (Identification No. XXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose